

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGEL BARTLETT,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:18-CV-183

ALLEGAN COUNTY COURT, et al.,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff initiated this action on February 20, 2018, against the Allegan County Court, the Allegan County Sheriff Department, the Allegan Police, seven (7) named individuals, and an unknown number of Unknown Parties. (ECF No. 1). As Plaintiff has been permitted to proceed as a pauper, the Court has reviewed Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2) to determine whether it is frivolous, malicious, or fails to state a claim upon which relief can be granted. For the reasons articulated herein, the undersigned recommends that Plaintiff's complaint be **dismissed**.

A claim must be dismissed for failure to state a claim on which relief may be granted unless the "[f]actual allegations [are] enough to raise a right for relief above the speculative level on the assumption that all of the complaint's allegations are true." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). The Court need not accept as true, however, factual allegations which are "clearly irrational or wholly incredible." *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

As the Supreme Court more recently held, to avoid dismissal, a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"

Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009). This plausibility standard “is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” If the complaint simply pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.* As the Court further observed:

Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. . . Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . . Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the wellpleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not “show[n]” - “that the pleader is entitled to relief.”

Id. at 678-79 (internal citations omitted). While Plaintiff’s complaint is largely unintelligible, Plaintiff does allege that she is subject to an “illegal PPO.” (ECF No. 1 at PageID.1). Plaintiff also asserts that “the case is at the 6th Circuit 18-1038.” (ECF No. 1 at PageID.1). Presently pending before the Sixth Circuit is *Bartlett v. Allegan County*, Case No. 18-1038 (6th Cir.). That case is an appeal of a decision by the Honorable Robert J. Jonker to dismiss, for lack of subject matter jurisdiction, a complaint brought by Plaintiff alleging the same general facts as asserted herein, namely that Plaintiff was subjected to an improper PPO. *Bartlett v. Allegan County*, Case No. 1:17-cv-1137, ECF No. 6 (W.D. Mich.).

The present matter is subject to dismissal for at least two reasons. As Judge Jonker concluded, this Court lacks jurisdiction to review final judgments of state court judicial proceedings. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84 (2005). Furthermore, this Court cannot resolve Plaintiff's present complaint because the claims asserted therein appear to be presently before the Sixth Circuit, that court having obtained jurisdiction prior to the initiation of the present action.

CONCLUSION

For the reasons discussed herein, the undersigned recommends that Plaintiff's claims be dismissed pursuant to 28 U.S.C. § 1915(e)(2). The undersigned further recommends that appeal of this matter would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997); 28 U.S.C. § 1915(a)(3).

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Dated: March 19, 2018

/s/ Ellen S. Carmody
ELLEN S. CARMODY
U.S. Magistrate Judge